

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.4350 of 2004

Vijay Vishnu Chikurdekar....Petitioner

VS

Rayat Shikshan Sanstha and ors..Respondents

Mr M.S.Topkar for petitioner

CORAM: A.P.SHAH J.

Dated 26.10.2005

P.C:

. Heard Mr Topkar, learned counsel appearing for the petitioner. Perused the record including the judgment and order of the college tribunal.

. The petitioner was working as Laboratory Asst in the college run by the respondent no.1 trust. The petitioner is a married person with two children. His first wife is living and the petitioner's marriage with her was subsisting at the relevant time. Despite this fact the petitioner contracted second marriage with a student of 3rd Year B A in the college who was residing in the hostel attached to the college. Disciplinary action was initiated against the petitioner and the Enquiry Officer, after considering the evidence led came to the conclusion that the petitioner was guilty of the charge of misconduct as he went through a bigamus

marriage, which is illegal. The Enquiry Officer made recommendation for dismissal of the petitioner from service of the institution which shall be disqualification for future employment in the University/college. The management after hearing the petitioner accepted the finding of the Enquiry Officer about the misconduct of the petitioner who decided to remove him from service. In appeal before the tribunal the main contention of the petitioner was that bigamous marriage by the petitioner does not amount to misconduct involving moral turpitude and in any event the quantum of punishment imposed on the petition is shockingly disproportionate. While rejecting this contention the tribunal observed as under:

"....Considering Rules (a) and (r) thereof with Rule 41(3) it will have to be held that the act of the appellant of contracting a bigamous marriage with a college student certainly involves moral turpitude. It is to be borne in mind that the appellant was working as a Laboratory Assistant in a college where may be having occasions to deal with the female students. It was therefore expected that he would behave in a decent manner with such female students.

This was the more necessary when he was a married man with two children and his first marriage subsisting. Despite this fact he developed or allowed to be developed improper relations with a girl student of the same college who was residing in the said college hostel. The bigamous marriage of the appellant is punishable under section 494 of the IPC and he could have been prosecuted for the same if his first wife had filed a complaint against him. The appellant has thus committed an offence of bigamy and that too in relation to college student. It cannot therefore be said that his act of bigamous marriage does not involve moral turpitude. It was certainly a conduct unbecoming of an employee of the college. The appellant has therefore been rightly indicated for having to commit misconduct within the meaning of Rule 42(r) of Standard Code.

".....The third and last submission made by Shri Topkar relates to the quantum of punishment imposed on the appellant. According to him the misconduct of the appellant is a minor lapse and therefore the

punishment of removal of service is shockingly disproportionate. He further submitted that the appellant ought to have been left off with a minor penalty. It is not possible to agree with Shri Topkar as the act of bigamous marriage cannot be regarded as a minor lapse. It has certainly serious and far reaching repercussions from the view point of the college and its image in the public. Letting off the appellant on a minor penalty would have given wrong message in the society and the people at large particularly the parents and guardians of the female students taking education in the said college. Their conscious would have been shocked to find that despite such a serious misconduct by the appellant, he was allowed to continue in service. In the result the image of the college as well as the institution which runs it would have been lowered in the public eyes. All employees are required to behave properly, decently and in consonance with the moral values of the society at large. The appellant took disadvantage of his position as a Lab Asst in the college and dared to commit such an act of moral turpitude in

relation to a female student. The nature of the misconduct admitted and proved against the appellant has thus to be understood in proper perspective. Considering from this point of view the gravity of his misconduct cannot be under emphasised".

. I am in agreement with the above view taken by the tribunal. The only other contention which is urged on behalf of the petitioner is that the termination of the petitioner from service amounted to double jeopardy as he had already been transferred from Karad to Vashi by way of punishment. The submission is without any substance. Perusal of the report of the Principal and the order of transfer shows that the transfer was not a punitive transfer and the management had decided to take disciplinary action against the petitioner.

. In the result petition is dismissed.